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No. 108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON,
PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND ~~DISTRICT~~ CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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The Proviso to Section 8(b)(4)(A)

Respondents in No. 313 contend that the proviso to Sec. 8(b)(4)(A) means that only a union which represents a majority of the employees in the plant can lawfully enlist the aid of employees of other employers not to cross the picket line (Resp. Br. 30-31). In view of the interrelationship of the four cases which have been set down on the summary docket, petitioners in No. 108 respectfully offer the following comment on the legislative history of the Act which bears upon this problem.

The House bill, as reported, explicitly forbade stranger picketing (Appendix A *infra*) and omitted any definition of the term "labor dispute." Congressman Holifield, who opposed the bill, stated on the floor of the House on April 17, 1947 that Sec. 12(a)(2) was unconstitutional on the basis of the decision of this Court in *A.F.L.* v. *Swing*, 312 U.S. 287; N.L.R.B., Legislative History L.M.R.A., 841-842. The House nevertheless passed the bill, including Sec. 12(a)(2) as reported (N.L.R.B., Legislative History L.M.R.A., 205). The Senate bill, as reported, did not contain a prohibition of stranger picketing and retained the definition of the term "labor dispute" in the Wagner Act which had originally been drawn from the Norris-LaGuardia Act (Appendix A). This definition of labor dispute included controversies "regardless of whether the disputants stand in the proximate relation of employer and employee." The proviso now in Sec. 8(b)(4)(A) was set forth in the Senate bill as reported (N.L.R.B., Legislative History L.M.R.A., 114). It passed the Senate in this form (*id. at* 241) and is the present provision of the Act (*id. at* 7, 511).

It is entirely clear that the House prohibition of stranger picketing was dropped in the conference report (Appendix A) and that the proviso was merely intended to make clear to the Congress and the country that the traditional right of labor to refuse to cross a picket line would not result in any penalties upon those exercising the right under the conditions of the proviso (Appendix A).

An illustration of this application of the proviso is to be found in *Cyril D. Cordova & Bro.*, 91 N.L.R.B. No. 187, 26 L.R.R.M. 1628, where the Board held that refusal by an

employee to cross a picket line established by a majority union did not constitute justification for discharge by the employer.

Illustrations of Secondary Boycotts in the Legislative History of Section 8(b)(4)(A) of the Act.

The National Labor Relations Board concedes that the type of case involved in the instant proceeding was not specifically referred to by the proponents of the legislation (Pet. Br. in No. 393, p. 60). For an exhaustive statement of the types of cases which the proponents of the legislation did refer to, see Hearings Before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., pp. 2545-2603, 579-582, 339-347.

Respectfully submitted,

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1200 15th St., N. W.,
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APPENDIX A

Pertinent excerpts from the legislative history of the Act on the subject of stranger picketing are as follows:

1. H. R. 3020, 80th Cong., 1st Sess., introduced April 10, 1947, reported with amendments April 11, 1947, Sec. 12(a)(2):

> "The following activity, when affecting commerce, shall be unlawful concerted activity:
>
> . . ."Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer." (N.L.R.B., Legislative History, L.M.R.A., 78).

2. H. Report No. 245, 80th Cong., 1st Sess., p. 44 (April 11, 1947):

> "Sec. 12(a)(2)—There obviously is no justification for picketing a place of business in which no labor dispute exists." (N.L.R.B., Legislative History, L.M.R.A., 335).

3. S. 1126, 80th Cong., 1st Sess., as reported April 17, 1947, Sec. 2(9):

> "When used in this Act:
>
> . . ."The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing,

maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." (N.L.R.B., Legislative History, L.M.R.A., 104).

4. Sen. Report No. 105, 80th Cong., 1st Sess., p. 23, April 17, 1947:

"Attached to Sec. 8(b)(4) is a proviso clause, which makes it clear that it shall not be unlawful for any person to refuse to enter upon the premises of any employer (other than his own) if the employees of that employer are engaged in a strike authorized by a union entitled to exclusive recognition. In other words, refusing to cross a picket line or otherwise refusing to engage in strike breaking activities would not be deemed an unfair labor practice unless the strike is a 'wildcat' strike by a minority group." (N.L.R.B., Legislative History, L.M.R.A., 78).

5. 80th Cong., 1st Sess., H. R. Conference Report No. 510, June 3, 1947, p. 34:

"The House bill omitted the definition which is contained in existing law of the term 'labor dispute' since a definition of that term was not considered necessary under the structure of the House Bill. The Senate amendment contained the definition contained in the existing law. The conference agreement follows the provision of the Senate amendment in this respect." (N.L.R.B., Legislative History, L.M.R.A., 538).

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